Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	MM Docket No. 93-75
	)	File No. BRCT-911001LY
For Renewal of License of Television Station WHFT(TV) Miami, Florida	)	
	)	
GLENDALE BROADCASTING COMPANY	)	File No. BPCT-911227KE
	)	
For Construction Permit for New Television Station in Miami, Florida	)	
	)	
and	)	
	)	
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.	)	MM Docket No. 93-156
	)	File No. BRCT-911129KR
For Renewal of License of Television Station WHSG(TV) Monroe, Georgia	)	
	)	
GLENDALE BROADCASTING COMPANY	)	File No. BPCT-920228KE
	)	
For Construction Permit for New Television Station in Monroe, Georgia	)	
	)	
and	)	
	)	
TRINITY BROADCASTING OF NEW YORK, INC.	)	File No. BRCT-940202KE
	)	
For Renewal of License of Television Station WTBY(TV) Poughkeepsie, New York	)	
	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-940426KG
	)	
For Construction Permit for	)	

New Television Station in Poughkeepsie, New York	)	
and	)	
NATIONAL MINORITY T.V., INC.	)	File No. BRCT-931004KI
For Renewal of License of Television Station KNMT(TV) Portland, Oregon	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-931230KF
For Construction Permit for New Television Station in Portland, Oregon	)	
and	)	
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.	)	File No. BRCT-930730KF
For Renewal of License of Television Station KTBN-TV Santa Ana, California	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-931028KS
For Construction Permit for New Television Station in Santa Ana, California	)	
SIMON T	)	File No. BPCT-931101LF
For Construction Permit for New Television Station in Santa Ana, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 22, 1999 **Released:** November 4, 1999

By the Commission: Commissioner Ness abstaining from voting; Commissioner Furchtgott-Roth dissenting and issuing a statement.

1. By this memorandum opinion and order we approve four settlement agreements involving the above-captioned stations licensed to various entities affiliated with the Trinity Broadcasting Network (TBN).[1] The Joint Request for Approval of Amended and Superceding Settlement Agreement, filed May 17, 1999, presents a settlement between Trinity and Glendale Broadcasting Company (Glendale) and Maravillas Broadcasting Company (Maravillas). Three pleadings, filed May 14, 1999 and entitled Amended Joint Request for Approval of Settlement Agreement and Request for Expedited Treatment, present settlements between Trinity and (1) The League of United Latin American Citizens (LULAC), (2) The Spanish American League Against Discrimination (SALAD), and (3) The California State Branches of the NAACP and the Alaska/Oregon/Washington State Conference of Branches of the NAACP (NAACP). We find that approval of the settlements would serve the public interest and comply with Commission precedent.

I. BACKGROUND

2. In four comparative renewal proceedings, Glendale and Maravillas seek the facilities of stations WHFT(TV), Miami, Florida, WHSG(TV), Monroe, Georgia, WTBY(TV), Poughkeepsie, New York, KNMT(TV), Portland, Oregon, and KTBN-TV, Santa Ana, California. Simon T, an individual, also seeks the Santa Ana station.[2] Additionally, LULAC and the NAACP filed petitions to deny against the Santa Ana facility, the NAACP filed a petition to deny against the Portland facility, and SALAD filed a petition to deny against the Miami facility.

3. Proceedings involving the Miami, Florida station resulted in a Commission decision concluding that Trinity Broadcasting of Florida, Inc. (TBF) was unqualified to remain a licensee and that Glendale was likewise unqualified to become a licensee. Trinity Broadcasting of Florida, Inc., FCC 98-313 (Apr. 15, 1999), appeal pending, Case No. 99-1183 (D.C. Cir. May 17, 1999).[3] The Commission held that the common principals of TBF and other TBN-affiliated entities had abused the Commission's processes by representing that National Minority T.V., Inc. (NMTV) was a minority-controlled entity to take advantage of an exception to the restrictions of the multiple ownership rules. The Commission found that NMTV was in fact controlled by TBN and its President, Paul Crouch. Additionally, the Commission found that George Gardner, a principal of Glendale (and Maravillas), lacked candor in requesting extensions of time

[1] For convenience, these entities will be referred to as "Trinity." A detailed listing of the parties to each settlement is found at paragraph 18, infra.

[2] A proposed settlement agreement between Simon T and Trinity is now pending before the Mass Media Bureau.

[3] Glendale and Maravillas intervened in the judicial appeal of the Commission's decision. They indicate, however, that they "will cease being interested parties" upon approval of the settlement. Notice of Intention, and Motion for Leave to Intervene, No. 99-1183 (D.C. Cir. filed June 8, 1999) at 2. The petitioners to deny did not intervene and will not participate in the appeal.

to construct several low power television stations. The Commission therefore denied TBF's application for renewal of the Miami station and also denied Glendale's competing application for a construction permit.[4]

4. Additionally, the Commission rejected settlement agreements submitted by Trinity, Glendale, Maravillas, LULAC, SALAD, and the NAACP. The Commission held that because these agreements were contingent on the renewal of the Miami station's license they could not be granted. FCC 98-313 at ¶¶ 13, 128. However, the Commission further held that, because the loss of the Miami station would be sufficient to deter future misconduct by Trinity's principals, there would be no bar to an amended settlement, otherwise in accordance with the Commission's rules, that did not contemplate renewal of the Miami station.

5. The parties have now filed amended settlement agreements that do not call for the grant of the Miami station's renewal application.

II. SETTLEMENT AGREEMENTS

6. Glendale/Maravillas Settlement. Under this proposed settlement, Trinity would purchase all of the stock and equity in Glendale/ Maravillas for $28 million. NMTV would contribute $4 million of this amount. The Glendale and Maravillas applications would be dismissed. The parties assert that the settlement of this case would serve the public interest in efficiently resolving licensing proceedings and conserving administrative resources. They have submitted sworn declarations indicating that none of the applications were filed for the purpose of reaching or carrying out a settlement agreement and that no payments have been made or promised outside of the agreement.

7. LULAC, SALAD, and NAACP Settlements. Pursuant to these settlements, LULAC, SALAD, and the NAACP would dismiss their petitions to deny against Trinity. Trinity would, in turn, pay $57,000 to LULAC, $143,500 to SALAD, and $11,500 to the NAACP as partial reimbursement of their respective legitimate and prudent legal expenses. Moreover, each of the settlements provides for Trinity to donate money for charitable purposes.

8. Specifically, the LULAC settlement calls for Trinity to donate $1.8 million to endow a series of grants to nonprofit organizations "to promote the increased participation of people of color in the attainment of the American dream" through the mass media, other businesses, and education. The agreement provides that the grants would be made by a committee of senior members of LULAC's board of directors and that LULAC and its principals could not be grantees.

9. The SALAD agreement provides that Trinity will donate $200,000 to endow two scholarships. The Antonio Maceo Scholarship Fund would award merit-based scholarships to students at Miami-Dade Community College or other Florida institutions of higher education for the study of broadcasting and mass communications. The Jorge Mas Canosa Bilingual Education Fund would award need-based scholarships for study at Miami-Dade Community College or other Florida institutions of higher education providing bilingual education for immigrant students seeking to become American citizens. The endowments would be managed by trustees independent of SALAD and SALAD's principals could not

[4] Glendale filed a Contingent Petition for Reconsideration of the Commission's decision, which will be dismissed as moot in light of the rulings herein.

be recipients of the scholarships.

10. The NAACP agreement similarly provides for Trinity to donate $50,000 for the establishment of a scholarship endowment. The W.E.B. DuBois Scholarship Fund would award merit-based scholarships to residents of Oregon and California enrolled in an Oregon or California institution of higher education studying mass communications or planning a career in broadcasting or mass communications. As in the case of the SALAD agreement, the fund would be managed by trustees independent of the NAACP and the NAACP's principals could not be recipients of the scholarships.

11. The parties have submitted sworn declarations that compensation under the agreements is limited to the reimbursement of legitimate and prudent legal fees and expenses. The Mass Media Bureau supports approval of the settlement agreements. As set forth in the following discussion, we agree with the Bureau's analysis.

III. DISCUSSION

12. We agree with the parties that approval of the settlement agreements would serve the public interest by avoiding burdensome litigation and uncertainty as to the status of the stations involved. Additionally, the endowments that would be established pursuant to the LULAC, SALAD, and NAACP agreements would also benefit the public. Although the settlements raise certain issues regarding compliance with the Commission's rules and policies, we resolve these issues favorably to the parties.

13. Glendale/Maravillas Settlement. Under 47 C.F.R. § 73.3523(c), a competing applicant in a comparative renewal proceeding may receive reimbursement for withdrawing its application only after issuance of an initial decision and then may only receive an amount less than or equal to its legitimate and prudent expenses. The Glendale/Maravillas Settlement does not conform to this provision because (1) with the exception of the Miami proceeding, no initial decisions have issued in the pertinent proceedings, and (2) the reimbursement stipulated exceeds Glendale/Maravilla's legitimate and prudent expenses.

14. In this case, however, we believe that waiver of the rule is appropriate. The Commission has concluded that the unnecessary prolongation of comparative renewal proceedings does not serve the public interest in an environment in which the legal standards applicable to comparative renewal proceedings are uncertain. See Implementation of Section 309(j) of the Communications Act, 13 FCC Rcd 15920, 16004-06 ¶¶ 209-14 (1998). In this regard, as a result of recent court cases, comparative renewal proceedings must be decided on an ad hoc basis. Id. As an additional matter, the record provides no indication that the applications here represent the type of abusive applications that the rule is intended to discourage. Glendale and Maravillas filed their applications subject to the limitations of 47 C.F.R. § 73.3523. As they indicate in their sworn declarations, they had no expectation of receiving the type of reimbursement prohibited by the rule. Moreover, Glendale and Maravillas have prosecuted their applications diligently for several years and in the case of the Miami proceeding, Glendale prosecuted its application through a final Commission decision. We therefore have no basis to believe that Glendale or Maravillas filed its applications for an improper purpose. Additionally, the Commission has held that enforcement of the rule in pending cases is not necessary to discourage the filing of abusive applications in the future, since Section 309(k) of the Communications Act prospectively bars the filing of applications mutually exclusive with renewal applications. See EZ Communications, Inc., 12 FCC Rcd 3307, 337-08 ¶¶ 2-3 (1997). This factor provides an additional reason to waive the limitations of 47 C.F.R. § 73.3523, and we do so here.

15. LULAC, SALAD, and NAACP Settlements. Citizens agreements calling for the withdrawal of a petition to deny must comply with 47 C.F.R. § 73.3588. In accordance with this provision, petitioners' reimbursement is limited to their legitimate and prudent expenses. LULAC, SALAD, and the NAACP have all submitted documentation demonstrating that their reimbursement does not exceed their legitimate and prudent expenses. Moreover, the agreements provide assurances that the respective petitioners will not benefit indirectly from the endowments established by the agreements. The SALAD and NAACP settlements both provide that the endowments will be administered by independent trustees and that the officers and directors of SALAD, LULAC, and the NAACP, members of those organizations associated with the Trinity litigation, and their relatives are ineligible to receive the scholarships. See Viacom International, Inc., 12 FCC Rcd 8474, 8479 ¶ 7 (MMB 1997). The Bureau initially raised questions about the LULAC settlement since it did not provide for administration of the endowed grants by an independent trustee. The parties, however, addressed the Bureau's concerns by modifying the agreement to provide that the grants would go to specified non-profit entities unrelated to LULAC, SALAD, or the NAACP. By specifying the recipients of the grants, the parties eliminated the possibility that the grants could be awarded in a manner that benefits LULAC. We therefore find that the settlements comply with 47 C.F.R. § 73.3588.

16. Forbearance Provisions. The final issue regarding the settlements concerns a provision contained in each of the settlements that would prohibit the parties for a period of up to ten years from filing any petition to deny, objection, mutually exclusive application, or other adverse pleading against Trinity. The Bureau initially objected to this provision to the extent that it barred the filing of bona fide information indicating that a station is not being operated in the public interest. See Nirvana Broadcasting Corp., 4 FCC Rcd 2778, 2779 ¶ 9 (Rev. Bd. 1989). The parties addressed the bureau's concerns by amending their settlements to provide that they permit the filing of "declaratory statements" bringing relevant information to the Commission after giving Trinity an opportunity to resolve any concerns raised by the statement. Thus, the provision is acceptable. See Scripps Howard Broadcasting Co., 10 FCC Rcd 5461, 5472 ¶¶ 56-58 (ALJ 1995).

17. In view of the foregoing, we find that the settlements comply with 47 U.S.C. § 311(c), 47 C.F.R. § 73.3523, and 47 C.F.R. § 73.3588 and that they would serve the public interest. We will dismiss the applications filed by Glendale and Maravillas. We will grant Trinity's application for the renewal of station WHSG(TV), Monroe, Georgia. The Bureau may now rule on the Simon T settlement, expeditiously complete the processing of the Santa Ana and all other applications relevant to these settlements, and issue grants or other dispositions as appropriate.

IV. ORDERING CLAUSES

18. ACCORDINGLY, IT IS ORDERED, That (1) the Joint Request for Approval of Amended and Superceding Settlement Agreement, filed May 17, 1999, by Glendale Broadcasting Company, Maravillas Broadcasting Company, Trinity Broadcasting of Florida, Inc., Trinity Christian Center of Santa Ana, Inc., Trinity Broadcasting of New York, Inc, and National Minority TV, Inc.; (2) the Amended Joint Request for Approval of Settlement Agreement, and Request for Expedited Treatment, filed May 14, 1999 by The League of United Latin American Citizens, Trinity Christian Center of Santa Ana, Inc., Trinity Broadcasting of Texas, Inc., and National Minority TV, Inc.; (3) the Amended Joint Request for Approval of Settlement Agreement, and Request for Expedited Treatment, filed May 14, 1999 by The California State Conference of Branches of the NAACP, the Alaska/Oregon/Washington State Conference of Branches of the NAACP, Trinity Christian Center of Santa Ana, Inc., and National Minority TV, Inc.;

and (4) the Amended Joint Request for Approval of Settlement Agreement, and Request for Expedited Treatment, filed May 14, 1999 by The Spanish American League Against Discrimination, Trinity Christian Center of Santa Ana, Inc., and National Minority TV, Inc. ARE GRANTED and the associated settlement agreements ARE APPROVED.

19. IT IS FURTHER ORDERED, That the following applications of Glendale Broadcasting Company and Maravillas Broadcasting Company ARE DISMISSED: File No. BPCT-911227KE, File No. BPCT-920228KE, File No. BPCT-940426KG, File No. BPCT-931230KF, and File No. BPCT-931028KS; that the following petitions to deny ARE DISMISSED: The League of United Latin American Citizens against KTBN-TV, The California State Conference of Branches of the NAACP and the Alaska/Oregon/Washington State Conference of Branches of the NAACP against KTBN-TV and KNMT(TV), and The Spanish American League Against Discrimination against WHFT(TV).

20. IT IS FURTHER ORDERED, That the application of Trinity Christian Center of Santa Ana, Inc. for renewal of Station WHSG(TV), Monroe, Georgia (File No. BRCT-911129KR) IS GRANTED; and that consistent with paragraph 17, supra, further action on pending applications IS REFERRED to the Mass Media Bureau.

21. IT IS FURTHER ORDERED, That the Contingent Petition of Glendale Broadcasting Company for Limited Reconsideration, filed May 17, 1999, and the Consent Motion for Extension of Time, filed June 1, 1999, by Glendale Broadcasting Company, ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

Dissenting Statement of Commissioner Harold W. Furchtgott-Roth
In re Trinity Broadcasting of Florida, Inc., Miami, Florida, MM Docket No. 93-75

These settlements agreements provide for payments to competing applicants and opponents of the relevant license renewals that far exceed the amounts permitted under our regulations. Contrary to the assertion of the item, there is no compliance with the regulation governing the withdrawal of petitions to deny the license application because the petitioners to deny are in fact receiving consideration in excess of their expenses. As to the withdrawal of the competing applications, the Commission's waiver of the relevant regulation on the grounds provided guts the very rule, in contravention of governing administrative law. Furthermore, in this item, the Commission places itself in the indefensible position of passing on the merits and demerits of private charitable or advocacy organizations in the course of approving settlement agreements.

Accordingly, I cannot vote to approve these settlements, which only sanction the filing of license applications and petitions to deny in hopes of rich pay-offs, ultimately undermining the integrity of the Commission's licensing processes.

Settlement with Petitioners to Deny: LULAC, SALAD, and NAACP

Section 73.3588 limits the reimbursements that can be made to petitioners who filed in opposition to the license renewal. Such parties, in order to withdraw, must certify that "neither [they], nor any person or organization related to the petitioner[s], has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses incurred in prosecuting the petition to deny." 47 C.F.R. section 73.3588(b)(1).

The purpose of this rule was to "effectively remove the economic incentive present in the renewal system to file . . . petitions to deny for the principal purpose of extorting settlements in exchange for dismissing these challenges." *Comparative Renewal Report & Order,* 4 FCC Rcd 4780 at para. 2. (1988). "By placing limitations as to . . . amount on payments that can be made in exchange for withdrawing . . . petitions to deny," the Commission meant to "remov[e]the profit incentive for filing these challenges." *Id.* at para. 71; *see also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes,* 5 FCC Rcd. 3911 (1990).

An express and documented concern that motivated the Commission to adopt this limit on payments to petitioners to deny was record evidence of the "reported abuse" of broadcasters being "threatened with license renewal challenges unless they contributed to the challenger's organization" and evidence that broadcasters "regularly contribute[d] to certain groups to avoid license renewal challenges." 4 FCC Rcd. at para. 24. Thus, contributions to particular organizations or groups was *precisely* the type of conduct that this rule was meant to prevent.

Here, those who filed to deny are directing payment to entities personally designated by them as payees in the amount of $2 million. In exchange for that act by the license renewal

applicant, the filers will withdraw their petitions. Even if the money is not being paid directly to the filers, the payment of money to third parties designated by the filers is equally problematic in terms of procedural abuse. As a general matter, the fact of third party payment does not remedy the impropriety of prohibited exchanges. For instance, if a government official does not personally receive money in return for voting a particular way, but agrees that the money be paid to somebody else, that is bribery nonetheless. *See* 18 USC section 201(b) (b). So long as the *quid* of withdrawal is given for the *quo* of payment, it does not matter, in so far as the prevention of procedural abuse is concerned, who the payment goes to. A corrupt exchange -- the payment of cash to induce the withdrawal of a petition to deny -- has occurred. And in both cases, the initial filing is motivated by the prospect of cash payments, whether to the filer personally or an entity picked by the filer. Thus, I would attribute to the filers themselves the payment of funds to parties expressly designated by the filers as recipients.

Even if one does not accept the argument that designation of third party payees by the filers is tantamount to receipt of the funds by the filers, the creation of the endowments picked by the petitioners is quite clearly "other consideration" for the withdrawal of the petitions to deny. Under the regulation, consideration is defined as

> financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, *as well as non-financial concessions that confer any type of benefit on the recipient.*

73.3588(c)(4) (emphasis added). Thus, consideration does not require economic benefit; peace of mind, personal satisfaction, or any other kind of advantage not previously enjoyed is sufficient.

Trinity clearly has made a "financial concession" to petitioners: they have agreed to give away money. This is something that Trinity had no preexisting obligation to do. The petitioners, in turn, have received "any type of benefit." Even though the money will not flow directly to petitioners, they have personally received consideration under the agreement in at least two ways.

First, petitioners have been given the power to tell Trinity to whom they must transfer the funds in question. This is something that petitioners had no preexisting right to do. If someone comes along and tells me that I can decide how to give away $1 million, that person has conferred an advantage on me -- the power of allocating those funds -- that I did not previously enjoy. The ability to allocate the funds may not, in the view of some, be as good as receiving the money personally, but that ability is itself a real benefit. And if the giving away of that other person's money gives me personal satisfaction or happiness or a feeling of well-being, that counts as consideration too.

Second, and perhaps more importantly, petitioners are clearly benefitted by the settlement agreement in that their public policy goals have been advanced by the creation of the endowments. The very raison d'etre of petitioners' organizations is to promote certain social and political ideas and causes. And every time one of these ideas or causes is advanced -- by, for instance, a donation to a fund that they support and in which they believe -- petitioners and

presumably their membersip are benefitted by that advancement.

Of course, petitioners must perceive some value to them in the right of designation and in the creation of the scholarship funds in question, or they would never have agreed to the settlement. Thus, when the Order states that "[b]y specifying the recipients of the grants, the parties eliminated the possibility that the grants could be awarded in a manner that benefits" them, *supra* at para. 15, it gets things exactly backwards. By designating the recipients of the grants (which the ability to do itself benefitted petitioners) the petitioners were able to ensure that the money would go to a cause that advanced their policy goals and thus inured to the benefit of the petitioning organizations.

In sum, I think it obvious--and thus a violation of our regulation--that petitioners are getting value out of this deal. For these reasons, and contrary to the conclusion of the item, there is in my view no compliance with section 73.3588.

I am also troubled by the conclusion in this item that "the endowments that would be established pursuant to the LULAC, SALAD, and NAACP agreements would . . . benefit the public." *Supra* at para. 12. This Commission should not be in the business of evaluating the merits or demerits of private charitable or political organizations and encouraging the flow of money to some groups over others. Suppose for a moment that the shoe were on the other foot: what if a settlement agreement directed payments to a group that espoused a political, legal or social philosophy inconsistent with that of the Commission's? Would we deny that settlement on the ground that the causes being funded did *not* serve the public? Either way, these are *wholly* inappropriate determinations for the Commission to be making. We are supposed to be implementing and enforcing federal communications law, not directing payments to favored organizations, however laudable, in exchange for the withdrawal of official papers in licensing proceedings.

Settlement with Competing Applicants: Glendale/Maravillas

Section 73.3535(c) of our regulations, which addresses the dismissal of applications in renewal proceedings, provides that competing applicants who with to withdraw their application can do so only after the initial decision *and* must certify "that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant in exchange for" such withdrawal. 47 C.F.R. section 73.3535(c).

Here, competing applicants are being paid $28 million -- a number far in excess of the parties' costs. Nor was an initial decision ever rendered. With no possibility that the rule could be satisfied, the Commission instead waives the rule for "good cause." As the D.C. Circuit has explained, however,

> a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why

deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.

Northeast Cellular Telephone Company, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(citing *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970) (requiring showing of special circumstances other than those considered in general rulemaking)).

There is articulated no "good cause" for waiver here that would not exist in virtually any case in which a competing applicant wanted to withdraw an application from a comparative hearing proceeding. If, as the Commission states, the limitation on payments to settling parties no longer serves any deterrent purpose, *supra* at para. 14, then the rule itself is useless in all applications and should simply be repealed. But it does not mean that there is something about the facts of this particular case that warrant a waiver.

And while it may be true that settlements should be encouraged because they decrease uncertainty and litigation, *id.* at para. 12, that is an argument for relaxing or eliminating the rule constraining settlements. In fact, it was an argument that was rejected in the course of the rulemaking that resulted in the instant regulations. *See* 4 FCC Rcd at para. 14. It is not, in any event, a case-specific consideration. Similarly, the fact that settlements in comparative license renewal proceedings in general are to be encouraged, *supra* at para. 14, goes to the need for the rule itself, not the justifiability of a waiver on the facts of this case.

Finally, the Commission says that it has no reason to believe that these competing applicants filed their documents with any improper intent. *Id.* at para. 14. But the fact that there is no specific evidence of intent to abuse Commission processes is likewise a general point that it not tied to anything about this particular case. This rule, adopted as a "safeguard[]" against procedural abuses, 5 FCC Rcd. at para. 1, is not premised on actual evidence of bad intent. (Of course, if the rule were anything but prophylactic, it would simply be redundant of the rules that prohibit actual abuse of the Commission's processes.) Rather, the rules establishes a limit on settlement payments in order to decrease the likelihood of such filings. If the rule can be waived anytime a party certifies that it had no bad intent, then the rule would achieve none of its preventative purpose.

This state of affairs is very much like that in *Northeast Cellular Telephone Company*, 897 F.2d 1166. There, the Court of Appeals vacated the Commission's waiver of the rule requiring a licensee to establish its financial qualification. The licensee did not meet the standard set forth in the rule for such qualification, but the Commission waived the rule on the ground that it knew from experience with the party that it was financially capable of operating the proposed systems. *Id.* at 1166. Because there was "no speculation" as to the party's financial qualifications, enforcement of the rule would not serve its intended purpose. *Id.*

The Court rejected this reasoning, holding that "[i]t does not articulate any standard by which we can determine the policy underlying its waiver. . . . The record reveals nothing unique

about [the licensee's] situation." Here, as explained above, the Commission has not pointed to anything about this specific case that warrants departure from the general rule. It simply reasons, in essential part, that it has no reason to believe these applicants acted in bad faith; but this is no more of a waiver standard than the Commission's belief that the party in *Northeast Cellular* could pay.

* * *

In sum, I believe that the settlement in this case raises a most unseemly appearance of payoffs to favored political or charitable organizations -- precisely the kind of situation that the relevant rules were intended to prevent. The reasoning of the Commission in approving the settlement as in conformity with our rule strains credulity: when a petitioner in opposition can require the transfer of cash payments to an entity hand-picked by the filer, that is just as much an abuse of the filing process as a transfer of cash to the filer itself, and the withdrawing party is clearly receiving a benefit under the agreement. Nor do I believe that the reasons given for the waiver of the rule governing competing applicants pass muster under the relevant judicial precedents. Accordingly, I respectfully dissent.